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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition of SBC Communications Inc.)
for Forbearance of Structural Separation)
Requirements and Request For Immediate)
Interim Relief in Relation to the Provision of)
Nonlocal Directory Assistance Services)

LOC OR-156

PETITION OF SBC COMMUNICATIONS INC. FOR
FORBEARANCE FROM SECTION 272 OF THE
FEDERAL TELECOMMUNICATIONS ACT OF 1996

SBC Communications Inc. ("SBC"), on behalf of Nevada Bell, requests forbearance from Section 272 of the Communications Act of 1934, as amended, ("the Act") in connection with Nevada Bell's provision of nonlocal directory assistance ("NDA") services. While SBC believes this Petition is unnecessary, given the sunset provisions of Section 272(f), SBC is filing this Petition out of an abundance of caution.

I. Background

On April 11, 2000 the Commission granted SBC's petition for forbearance to allow Ameritech Telephone Company, Pacific Bell Telephone Company, Southwestern Bell Telephone Company ("SWBT") (collectively "SBC Telcos")¹ to provide NDA services without complying

¹ Nevada Bell's Petition is virtually identical to the Petition for forbearance of Section 272 in connection with the provision of nonlocal directory assistance services filed by SBC on behalf of the SBC Telcos. See *Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services* (filed Nov. 2, 1999).

with the separate affiliate requirements of Section 272.² In that order, the Commission declined to address Nevada Bell's petition for forbearance from Section 272 because Nevada Bell, at the time, did not provide NDA services.³ Subject to the Commission's ruling, Nevada Bell intends to begin offering NDA services in October 2002.

Nevada Bell will offer nonlocal DA services in the same manner as Pacific Bell and SWBT, *i.e.*, through SBC-owned information storage facilities that provide nonlocal DA listings. Specifically, for California listings, Nevada Bell will query an SBC-owned information storage facility located in Concord, California. For all other nonlocal listings, Nevada Bell will query an SBC-owned information storage facility located in Rochester, New York.

I. InterLATA Provision of NDA Services

In the *SBC NDA Order*, the Commission determined that the BOCs' provision of nonlocal DA was an interLATA service, but that the service fell within a permissible exception of the Act, specifically Section 271(g)(4).⁴ Section 271(g)(4) provides that a BOC may provide incidental interLATA services where the service "...permits a customer that is located within one LATA to retrieve stored information from ...information storage facilities of such company that

² See *BellSouth Petition for Forbearance for Nonlocal Directory Assistance Service*, CC Docket No. 97-172, *Petition of SBC Communications, Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services*, CC Docket No. 97-172, *Petition of Bell Atlantic for Further Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, 15 FCC Rcd 6053 (2000) ("*SBC NDA Order*").

³ *Id.*, n.2. ("We do not address in this Order the petition filed on behalf of Nevada Bell because Nevada Bell does not currently provide nonlocal directory assistance service. Nevada Bell must demonstrate that its nonlocal directory assistance service falls within the scope of section 271(g)(4) at the time it seeks to provide such service.").

⁴ *SBC NDA Order*, ¶2.

are located in another LATA.”⁵ Nevada Bell’s nonlocal DA service falls squarely within this exception. Nevada Bell’s nonlocal DA service would permit its customers to retrieve directory assistance listings from SBC-owned⁶ information storage facilities located in another LATA.

II. Forbearance Under Section 10

Section 10(a) requires that the Commission forbear from the application of any provision of the Act, if it determines that:

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not ~~unjustly or unreasonably discriminatory~~;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.⁷

In the *SBC NDA Order*, the Commission forbore from requiring the SBC Telcos to provide NDA services through a structurally separate Section 272 company. With respect to the first criterion of Section 10, the Commission found it important that the SBC Telcos were new entrants competing against interexchange carriers, wireless and internet service providers, and that they did not exercise monopoly power “over the components used to provide the telephone

⁵ 47 U.S.C. §271(g)(4).

⁶ In granting SWBT and Pacific Bell Section 272 relief, the Commission granted them approval to use the information storage facilities owned by their sister Bell Operating Company (“BOC”), Ameritech. See SBC Petition, at 3. Similarly, Nevada Bell requests authority to use the information storage facilities owned by its sister BOCs, all of whom are subsidiaries of SBC Communications Inc.

⁷ 47 U.S.C. §160 (a).

numbers of customers outside their region.”⁸ Further, the FCC determined that imposition of Section 271(c)’s nondiscrimination requirements would ensure that the SBC Telcos’ rates were just and reasonable and not unreasonably discriminatory. In this regard, the Commission required the SBC Telcos to do the following: 1) make available to unaffiliated entities all of the in-region directory listings that they use to provide NDA service at the same rates, terms, and conditions they impute to themselves; 2) make changes to their cost allocation manuals to reflect this accounting change; and 3) update and maintain the directory listing information they provide to unaffiliated entities in the same manner that they update and maintain the directory listing information they use in the provision of nonlocal directory assistance service.⁹

With respect to the second criterion, the Commission concluded that imposition of the Section 271(c)(1) nondiscrimination requirements would promote a fully competitive market for NDA services and ensure that no competitor has an undue advantage in the provision of NDA services.¹⁰ This competition, the Commission concluded, would benefit consumers, rendering enforcement of Section 272 unnecessary.¹¹ As for the third criterion, the Commission concluded that forbearance from Section 272 would allow the SBC entities to compete more effectively in the NDA marketplace, which would serve the public interest.¹²

⁸ *SBC NDA Order*, ¶14.

⁹ *Id.*, ¶15.

¹⁰ *Id.*, ¶16.

¹¹ *Id.*

¹² *Id.*, ¶17.

The foregoing determinations are equally applicable here. As detailed below, the Commission should likewise forbear from applying the Section 272 separate affiliate requirements to Nevada Bell in its provision of nonlocal DA services.

A. Enforcement of Section 272 is Not Necessary to Ensure that Nevada Bell's nonlocal DA Services are Just and Reasonable and Are Not Unjustly or Unreasonably Discriminatory, or to Protect Consumers.

Requiring Nevada Bell to provide nonlocal DA services (both regional and national) through a separate Section 272 affiliate is not necessary to ensure that rates and services are just and reasonable, or to protect consumers. Vigorous competition exists today among interexchange carriers, such as AT&T, MCI, and Sprint, and local exchange companies in the provisioning of nonlocal DA services. Interexchange carriers offering these nonlocal DA services generally charge anywhere from \$.99 to \$2.49.¹³ Nevada Bell intends to charge a price that is between \$.99 and \$1.50 for NDA service. There is, therefore, no plausible argument that Nevada Bell's rates will be unreasonable, unjust or discriminatory. Also, given the robust competition in the nonlocal DA market, consumers have ample alternatives, rendering enforcement of Section 272 unnecessary to protect consumers.

In addition, Nevada Bell's NDA service will be tariffed in Nevada, thus the terms and pricing of Nevada Bell's NDA service will be the subject of public disclosure and state regulatory approval. Further, Nevada Bell makes available to unaffiliated entities: 1) all of the directory listing information used to provide in-region directory assistance service at the same

¹³ MCI RAISES DISTANCE RATES, THE WASHINGTON TIMES, MAY 3, 2002. Interexchange NDA is provided by IXC's to both their PIC'd customers via "00" dial code as well as to non PIC'd customers via dial around codes (i.e. 10-10-XXXX).

rates, terms, and conditions it imputes to itself.¹⁴ 2) will make changes to cost allocation manuals to reflect this accounting change; and, 3) update and maintain the directory assistance listing information it provides to unaffiliated entities it uses in the provision of nonlocal directory assistance service. In light of the foregoing, application of Section 272 to Nevada Bell's nonlocal DA services is not necessary to ensure just and reasonable rates or to protect consumers.

B. Forbearance from Section 272 as Described in this Petition is Consistent with the Public Interest.

In determining whether forbearance is in the public interest, Section 10(b) requires the Commission to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."¹⁵ Forbearance here would benefit consumers and promote the public interest by allowing Nevada Bell to compete in the NDA market. If Nevada Bell is required to provide NDA services through a structurally separate affiliate, the company would incur significant added expenses and inefficiencies. Nevada Bell would be required to employ separate personnel, facilities and equipment in

¹⁴Nevada Bell's regional listings include Sprint listings for Nevada customers. Nevada Bell, however, does not provide DA services for Sprint and as a consequence does not obtain Sprint's DA listings by providing DA services to Sprint. Instead, Nevada Bell, like other third parties, purchases Sprint's listings for inclusion in its DA database, and therefore is in the same position as any other third party desiring Sprint's DA listings. In the FCC's *Directory Listing Order*, the Commission concluded, "LECs should not be required to provide nondiscriminatory access to nonlocal directory listings since third parties have the same opportunity to secure the information directly." *Provision of Directory Listing Information under the Telecommunications Act of 1934, as amended*, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736, ¶32 (2001). In reaching this conclusion, the Commission relied, in part, on its analysis in the *US West Forbearance Order*, wherein it declined to require US West to provide nonlocal DA data to others because US West did not have monopoly power over obtaining those listings. *Id.* (citing *US West Forbearance Order*, 14 FCC Rcd at 16271. This reasoning applies to Sprint's DA listings purchased by Nevada Bell. SBC accordingly does not interpret the Commission's rules to require Nevada Bell to provide Sprint's DA listings on a nondiscriminatory basis. As the Commission is aware, SBC and BellSouth filed a Petition for Clarification or Reconsideration of this matter on March 23, 2001.

¹⁵ 47 U.S.C. §10(b).

operating its nonlocal directory assistance services, even though those assets should logically and efficiently be shared with the local directory assistance service. Granting the Section 272 relief requested here would avoid these unnecessary costs, and allow Nevada Bell to be an effective competitor in the market for NDA services. Such efficiencies would result in better service and prices, thereby furthering the public interest.

III. CONCLUSION

Accordingly, SBC respectfully requests forbearance from Section 272 of the Act so that Nevada Bell can provide NDA Services under the terms and conditions set forth herein.

Respectfully submitted,

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